

work sheet showing the computation of the proposed assessment on the person to whom the notice or order was issued, by certified mail, or by any alternative means consistent with the rules governing service of a summons and complaint under Rule 4 of the Federal Rules of Civil Procedure, within 30 days of the issuance of the notice or order. If a copy of the proposed assessment and work sheet or the certified mail is tendered at the address of that person set forth in the sign required under 30 CFR 715.12(b) or at any address at which that person is in fact located, and he or she refuses to accept delivery or to collect such documents, the requirements of this paragraph shall be deemed to have been complied with upon such tender.

(c) Unless a conference has been requested, the Office shall review and reassess any penalty if necessary to consider facts which were not reasonably available on the date of issuance of the proposed assessment because of the length of the abatement period. The Office shall serve a copy of any such reassessment and of the worksheet showing the computation of the reassessment in the manner provided in paragraph (b) of this section, within 30 days after the date the violation is abated.

[45 FR 58783, Sept. 4, 1980, as amended at 56 FR 28445, June 20, 1991]

§ 723.18 Procedures for assessment conference.

(a) The Office shall arrange for a conference to review the proposed assessment or reassessment, upon written request of the person to whom the notice or order was issued, if the request is received within 30 days from the date the proposed assessment or reassessment is received.

(b)(1) The Office shall assign a conference officer to hold the assessment conference. The assessment conference shall not be governed by section 554 of title 5 of the United States Code, regarding requirements for formal adjudicatory hearings. The assessment conference shall be held within 60 days from the date the conference request is received or the end of the abatement period, whichever is later.

(2) The Office shall post notice of the time and place of the conference at the

regional, district or field office closest to the mine at least 5 days before the conference. Any person shall have a right to attend and participate in the conference.

(3) The conference officer shall consider all relevant information on the violation. Within 30 days after the conference is held, the conference officer shall either:

(i) Settle the issues, in which case a settlement agreement shall be prepared and signed by the conference officer on behalf of the Office and by the person assessed; or

(ii) Affirm, raise, lower, or vacate the penalty.

(4) An increase or reduction of a proposed civil penalty assessment of more than 25 percent and more than \$500 shall not be final and binding on the Secretary, until approved by the Director or his designee.

(c) The conference officer shall promptly serve the person assessed with a notice of his or her action in the manner provided in 30 CFR 723.17(b) and shall include a worksheet if the penalty has been raised or lowered. The reasons for the conference officer's action shall be fully documented in the file.

(d)(1) If a settlement agreement is entered into, the person assessed will be deemed to have waived all rights to further review of the violation or penalty in question, except as otherwise expressly provided for in the settlement agreement. The settlement agreement shall contain a clause to this effect.

(2) If full payment of the amount specified in the settlement agreement is not received by the Office within 30 days after the date of signing, the Office may enforce the agreement or rescind it and proceed according to paragraph (b)(3)(ii) of this section within 30 days from the date of the rescission.

(e) The conference officer may terminate the conference when he determines that the issues cannot be resolved or that the person assessed is not diligently working toward resolution of the issues.

[45 FR 58783, Sept. 4, 1980, as amended at 53 FR 3674, Feb. 8, 1988; 56 FR 10063, Mar. 8, 1991]

Surface Mining Reclamation and Enforcement, Interior

§ 724.14

§ 723.19 Request for hearing.

(a) The person charged with the violation may contest the proposed penalty or the fact of the violation by submitting a petition and an amount equal to the proposed penalty or, if a conference has been held, the reassessed or affirmed penalty to the Office of Hearings and Appeals (to be held in escrow as provided in paragraph (b) of this section) within 30 days from receipt of the proposed assessment or reassessment or 30 days from the date of service of the conference officer's action, whichever is later. The fact of the violation may not be contested, if it has been decided in a review proceeding commenced under section 525 of the Act and 43 CFR part 4.

(b) The Office of Hearings and Appeals shall transfer all funds submitted under paragraph (a) of this section to the Office, which shall hold them in escrow pending completion of the administrative and judicial review process, at which time it shall disburse them as provided in 30 CFR 723.20.

[45 FR 58783, Sept. 4, 1980, as amended at 56 FR 10063, Mar. 8, 1991]

§ 723.20 Final assessment and payment of penalty.

(a) If the person to whom a notice of violation or cessation order is issued fails to request a hearing as provided in 30 CFR 723.19, the proposed assessment shall become a final order of the Secretary and the penalty assessed shall become due and payable upon expiration of the time allowed to request a hearing.

(b) If any party requests judicial review of a final order of the Secretary, the proposed penalty shall continue to be held in escrow until completion of the review. Otherwise, subject to paragraph (c) of this section, the escrowed funds shall be transferred to the Office in payment of the penalty, and the escrow shall end.

(c) If the final decision in the administrative and judicial review results in an order or eliminating the proposed penalty assessed under this part, the Office shall within 30 days of receipt of the order refund to the person assessed all or part of the escrowed account, with interest from the date of payment

into escrow to the date of the refund at the rate of 6 percent or at the prevailing Department of the Treasury rate, whichever is greater.

(d) If the review results in an order increasing the penalty, the person to whom the notice or order was issued shall pay the difference to the Office within 15 days after the order is mailed to such person.

PART 724—INDIVIDUAL CIVIL PENALTIES

Sec.

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AUTHORITY: 30 U.S.C. 1201 *et seq.*

SOURCE: 53 FR 3674, Feb. 8, 1988, unless otherwise noted.

§ 724.1 Scope.

This part covers the assessment of individual civil penalties under section 518(f) of the Act.

§ 724.12 When an individual civil penalty may be assessed.

(a) Except as provided in paragraph (b) of this section, the Office may assess an individual civil penalty against any corporate director, officer or agent of a corporate permittee who knowingly and willfully authorized, ordered or carried out a violation, failure or refusal.

(b) The Office shall not assess an individual civil penalty in situations resulting from a permit violation by a corporate permittee until a cessation order has been issued by the Office to the corporate permittee for the violation, and the cessation order has remained unabated for 30 days.

§ 724.14 Amount of individual civil penalty.

(a) In determining the amount of an individual civil penalty assessed under § 724.12, the Office shall consider the criteria specified in § 518(a) of the Act, including:

(1) The individual's history of authorizing, ordering or carrying out previous